

**REMARKS**

**Revocation of Power of Attorney**

Applicant is enclosing herewith a Revocation of Power of Attorney and Appointment of New Attorney naming BRUCE H. TROXELL as attorney of record in this patent application. It is requested that all further correspondence regarding this matter be forwarded to TROXELL LAW OFFICE PLLC at the address listed on the enclosed form. A CHANGE OF ADDRESS FORM is also being submitted herewith.

**Claim Rejections**

Claim 3 is rejected under 35 U.S.C. § 112, second paragraph. Claims 1-3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art in view of Fabricius (U.S. 3,885,129) and either Balandier et al. (U.S. 6,114,667) or Kauo et al. (5,263,115).

**Drawings**

It is noted that the Examiner has accepted the drawings as originally filed with this application.

**Amendments to Specification**

Applicant has amended the specification as noted above to cure obvious grammatical and idiomatic inaccuracies. It is believed that the foregoing amendments to the specification overcome the outstanding objections thereto. No "new matter" has been added to the original disclosure by the foregoing amendments to the specification.

**New Claims**

By this Amendment, Applicant has canceled claims 1-3 and has added new claims 4-6 to this application. It is believed that the new claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and

define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The new claims are directed toward a constant temperature cooking device comprising: a heat resistant outer pot (11) having: a heat resistant upper cover (12) sealing a top thereof; and an opening enclosing body (14); an inner pot (2) located in an interior of the heat resistant outer pot having: an inner pot lid (21) sealing a top thereof; and a handle (22) located above the opening enclosing body and suspending the inner pot within the interior of the heat resistant outer pot; and a heating apparatus (3) located on an interior of the bottom of the heat resistant outer pot and having a heating element (34) that is a positive temperature ceramic resister and a heat conducting plate (33) located above the positive temperature ceramic resister.

Other embodiments of the present invention include: the heat resistant outer pot has a lower tray (13) located below the bottom thereof; and the heating apparatus is spaced apart from the inner pot.

The primary reference to Applicant's admitted prior art teaches a sealed cooker having an inner pot that is heated by fire and then placed in an interior of a sealed cooker. Once the inner pot is placed within the sealed cooker it is removed from the heat source.

Applicant's admitted prior art does not teach an inner pot having a handle located above the opening enclosing body and suspending the inner pot within the interior of the heat resistant outer pot; a heating apparatus located on an interior of the bottom of the heat resistant outer pot; the heating apparatus having a heating element that is a positive temperature ceramic resister and a heat conducting plate located above the positive temperature ceramic resister; the heat resistant outer pot has a lower tray located below the bottom thereof; nor does Applicant's admitted prior art teach the heating apparatus is spaced apart from the inner pot.

The secondary reference to Fabricius teaches a positive temperature coefficient resistor heater (10) having electrodes (12, 13), a base (50) in which the PTCR body (10) is inserted, and a cup (60) is located on top of the base.

Fabricius does not teach a heat resistant outer pot; an inner pot located in an interior of the heat resistant outer pot; a heating apparatus located on an interior of

the bottom of the heat resistant outer pot; the heat resistant outer pot has a lower tray located below the bottom thereof; nor does Fabricius teach the heating apparatus is spaced apart from the inner pot.

The secondary reference to Balandier et al. teaches an integral rivet for attachment of parts including an electric heating resistance (13) connected to a sheet (4) having a brazing layer (12) on which a container having a sheet (11) on the bottom thereof is placed.

Balandier et al. do not teach a heat resistant outer pot; an inner pot located in an interior of the heat resistant outer pot; a heating apparatus located on an interior of the bottom of the heat resistant outer pot; the heat resistant outer pot has a lower tray located below the bottom thereof; nor do Balandier et al. teach the heating apparatus is spaced apart from the inner pot.

The secondary reference to Kauo et al. teaches a PTC electric heating element assembly including a heating element (11), two insulating elements (14, 14'), and four metal sheets (12, 12', 16, and 16'). The heating element is located on an exterior of a container (10).

Kauo et al. do not teach a heat resistant outer pot; an inner pot located in an interior of the heat resistant outer pot; a heating apparatus located on an interior of the bottom of the heat resistant outer pot; the heat resistant outer pot has a lower tray located below the bottom thereof; nor do Kauo et al. teach the heating apparatus is spaced apart from the inner pot.

Even if the teachings of Applicant's admitted prior art, Fabricius, Balandier et al., and Kauo et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: an inner pot having a handle located above the opening enclosing body and suspending the inner pot within the interior of the heat resistant outer pot; a heating apparatus located on an interior of the bottom of the heat resistant outer pot; the heat resistant outer pot has a lower tray located below the bottom thereof; nor does the combination suggest the heating apparatus is spaced apart from the inner pot.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which

allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Applicant's admitted prior art, Fabricius, Balandier et al., or Kauo et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Applicant's admitted prior art, Fabricius, Balandier et al., nor Kauo et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's new claims.

### **Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

Date: November 22, 2004

By:

  
Bruce H. Troxell  
Reg. No. 26,592

TROXELL LAW OFFICE PLLC  
5205 Leesburg Pike, Suite 1404  
Falls Church, Virginia 22041  
Telephone: 703 575-2711  
Telefax: 703 575-2707